



DEPARTMENT OF THE NAVY
NAVAL SEA SYSTEMS COMMAND
2531 JEFFERSON DAVIS HIGHWAY
ARLINGTON VA 22242-5160

IN REPLY REFER TO

CONTRACT N00024-95-C-0204

CONTRACT FOR THE DONATION OF
HEAVY CRUISER EX-U.S.S. SALEM

THIS CONTRACT entered into this 13th day of October 1994 by and between the UNITED STATES OF AMERICA (hereinafter called the "Government") represented by the Department of the Navy and the United States Naval Shipbuilding Museum located in Quincy, Massachusetts (hereinafter referred to as the "DONEE" or "CONTRACTOR"):

WITNESSETH:

WHEREAS, the National Defense Authorization Act for Fiscal Year 1994, Public Law 103-160, section 1181, November 30, 1993, authorizes the Secretary of the Navy to transfer the obsolete heavy cruiser SALEM to the United States Naval Shipbuilding Museum; this authority is notwithstanding subsections (a) and (c) of 10 U.S.C. § 7308 (subsequently recodified at subsections (a) and (d) of 10 U.S.C. 7306), but subject to subsection (b) of 10 U.S.C. 7308 (subsequently recodified at subsections (b) and (c) of 10 U.S.C. 7306); the transfer authorized by this public law may be made only if the Secretary determines (1) by appropriate tests, including tests administered by the Environmental Protection Agency, that the EX-U.S.S. SALEM is in environmentally safe condition; (2) that the DONEE has adequate financial resources to maintain the cruiser in a condition satisfactory to

the Secretary; (3) that the vessel is of no further use to the United States for national security purposes; and (4) the Secretary may require such terms and conditions in connection with the transfer authorized by this section as the Secretary considers appropriate; and

WHEREAS, the DONEE has applied for donation of the obsolete Heavy Cruiser EX-U.S.S. SALEM (hereinafter sometimes called the "Vessel"), and has indicated its intention to preserve the Vessel; and

WHEREAS, the DONEE agrees to and undertakes the obligation to make and keep the Vessel safe and in good operational condition, at no expense to the Government; and

WHEREAS, the Government hereby determines that (1) appropriate tests, including tests by the Environmental Protection Agency, have been made, and that the EX-U.S.S. SALEM is in environmentally safe condition; (2) that the DONEE has adequate financial resources to maintain the cruiser in a condition satisfactory to the Secretary; and (3) the EX-U.S.S. SALEM is of no further use to the United States for national security purposes.

NOW THEREFORE, the Government agrees to transfer the Vessel to the DONEE and the DONEE agrees to accept the Vessel subject to

the following terms and conditions:

1. The Government shall, subject to the provisions of article 4 hereof, deliver the Vessel to the DONEE at its current location at the Philadelphia Naval Shipyard on an "as is, where is" basis and without warranty of any kind, and shall notify the DONEE of the delivery date sufficiently in advance thereof to enable the DONEE to make the necessary arrangements for acceptance of delivery.

2. The DONEE shall:

(a) Accept the Vessel upon delivery by the Department of the Navy.

(b). The DONEE shall not activate or permit to be activated any system aboard the Vessel for the purpose of navigation or movement of the Vessel under its own power, and it also shall not activate or permit to be activated the galley for the purpose of serving meals.

(c) Including any successor in interest, shall establish and operate the Vessel on a non-profit basis as a public memorial or museum only, exhibit it at Quincy, Massachusetts, and maintain the Vessel in a condition satisfactory to the Department of the Navy in such a manner that it will not cast discredit upon the Navy or upon the proud tradition of the Vessel, and will not allow the Vessel to become a menace to navigation, public health or safety.

(d) At its own expense, without reimbursement or contribution by the Government, protect, preserve and maintain the Vessel, including her hull, machinery, and appurtenances in a good state of repair and in efficient operating condition in accordance with sound marine maintenance practice and in a manner and condition satisfactory to the Navy.

(e) Allow representatives of the Government access to all of the DONEE's records, documents, and facilities, including the right to perform inspections no less than annually of the Vessel itself, as determined necessary, to assure the accuracy of information provided the Government and compliance with the terms of this contract.

(f) Take all steps necessary to comply with any written directions or instructions which the Navy may prescribe as necessary for the protection, preservation, maintenance and repair of the Vessel and paint over and completely obliterate all Navy markings on the Vessel, including hull numbers.

(g) Comply with all applicable laws and regulations with respect to the documentation and operation of the Vessel and obtain all certificates, licenses and permits required by law.

(h) Comply with all Federal, State and local laws and regulations in being or that may be hereinafter enacted or issued relating to the protection of the environment, public health and safety.

(i) Not transfer or otherwise dispose of the Vessel or any part thereof or any interest therein without the prior written

consent of the Secretary of the Navy or his duly authorized representatives.

3. The Government shall not be responsible for loss or damage to the property of the DONEE or property of others or for bodily injuries to or death of the DONEE's officers, agents, servants or employees, or to other persons arising from or incident to the use, operation and maintenance of the Vessel by the DONEE. The DONEE shall indemnify, save harmless and defend the Government from and against all claims, demands, actions, liabilities, judgments, costs, and attorney's fees, arising out of, claimed on account of, or in any manner predicated upon bodily injury, death, or property damage caused by or resulting from possession or use of the donated property.

4. The DONEE shall procure and maintain at its own expense, without reimbursement or contribution by the Government, from and after the delivery of the Vessel, Tower's broad form liability insurance, including Tower's coverage for negligent damage to the Vessel during any tow and maintain Marine Hull and Protection insurance in the amount of \$76,500.00 and collision protection and indemnity liability insurance in the amount of \$2,000,000.00. Upon completion of the permanent mooring arrangement, the DONEE may substitute for Marine Hull insurance not less than \$76,500.00 of fire and extended-coverage insurance, including risks of vandalism and malicious mischief; and shall maintain general

liability insurance in an amount not less than \$2,000,000.00 (Single Limit) per occurrence. Such insurance shall at all times protect the United States Government, its agents or employees, in berthing, preparation for use, repairing or any other use. Marine Hull insurance shall name the Secretary of the Navy as loss payee. Liability insurance shall name the United States Government and Department of the Navy as additional insured and shall, as to form and insurers, be subject to the approval of the Assistant Secretary of the Navy (RD&A), Insurance Examiner (APIA-PP-CM-N), Washington, D. C. 20350-1000.

5. In the event that the Vessel is lost or destroyed prior to the time of delivery by fire, shipwreck, act of providence or of a foreign power, or by any other means whatsoever, whether by negligence on the part of the Government, or not, this Agreement shall become void and of no effect.

6. The DONEE acknowledges that Polychlorinated Biphenyls (PCB's) are present on the Vessel donated by the Government and that the use of many of the PCB items on the Vessel is not authorized by the Toxic Substances Control Act, 15 U.S.C. 2601 et seq. or regulations implementing it. The DONEE further acknowledges that the PCB items require special precautions to ensure against risks to health and the environment. Accordingly, the DONEE agrees that it will manage and dispose of all PCB items on board the Vessel in accordance with the provisions of paragraph 2(h) above

and such other requirements as may be established by agreement with EPA or its cognizant regional office.

7. (a) This contract is subject to the Contract Disputes Act of 1978 as amended (41 U.S.C. 601-613) (the Act).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of contract terms, or other relief arising under or relating to this contract. A claim arising under a contract, unlike a claim relating to that contract, is a claim that can be resolved under a contract clause that provides for the relief sought by the claimant. However, a written demand or written assertion by the Contractor seeking the payment of money exceeding \$50,000.00 is not a claim under the Act until certified as required by subparagraph (d)(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d) (1) A claim by the Contractor shall be made in writing

and submitted to the Contracting Officer for a written decision. A claim by the Government against the Contractor shall be subject to a written decision by the Contracting Officer.

(2) For Contractor claims exceeding \$50,000.00, the Contractor shall submit with the claim a certification in the following form:

I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable; and that I am duly authorized to bind the contractor with respect to the claim.

(Official's Name)

(Title)

(3) (i) If the Contractor is an individual, the certification shall be executed by that individual.

(ii) If the Contractor is not an individual, the certification must be executed by an individual who has authority to bind the Contractor and has knowledge of the claim or request, its basis, and of the accuracy and completeness of the supporting data.

(e) For Contractor claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render a decision within 60 days of the request. For Contractor-certified claims over \$50,000, the Contracting Officer must, within 60 days, decide the claim or notify the Contractor of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act.

(g) The Government shall pay interest on the amount found due and unpaid from (1) the date the Contracting Officer receives the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.

8. (a) The Government may, during a national emergency, request the DONEE to return the Vessel and the DONEE shall, if and when requested to do so, return the Vessel at no cost or expense to the Government; unless the DONEE is notified otherwise, title to the vessel shall revert to the Government immediately upon the Government's request.

(b) In the event that the DONEE, or its assigns, shall fail

to perform the obligations assumed under this contract, the Secretary of the Navy or his duly authorized representative may terminate this contract, provided that written notice to terminate, specifying the particulars wherein it is claimed that this contract has been violated, is transmitted by registered mail to the DONEE. The DONEE shall have ninety (90) days from the date of receipt of the written notice to cure the violations or deficiencies set forth in said notice or to begin diligent efforts to effect any cure which may require more than ninety (90) days to complete. If, at the end of such time, it appears to the Secretary of the Navy, or his authorized representative, that the violations have not been cured, then the contract will be terminated, in which event the DONEE shall forfeit to the Government any and all rights that it may have in the Vessel, including rights in any improvements made to the Vessel or fixtures attached by the DONEE, as the Secretary of the Navy or his duly authorized representative may decide, and if the Secretary of the Navy or his duly authorized representative so directs, shall transfer title and return the Vessel to the Navy at a location designated by the Navy at no cost or expense to the Government. In the event the Vessel becomes a hazard to navigation, public health, safety or property, the Secretary of the Navy or his duly authorized representative may terminate this contract immediately.

9. The Government reserves the right to remove equipment from

the Vessel required to satisfy Fleet material needs. In cases where such removal affects the display of the Vessel, the Navy will attempt to provide a cosmetically suitable piece of equipment as a replacement.

10. The Government has the right to approve or disapprove the nature and types of displays and exhibits, and retail sales activities to be installed in the Vessel, for the purpose of assuring that such displays, exhibits and retail sales activities will not cast discredit upon the Navy or the proud tradition of this historic vessel.

11. The DONEE acknowledges that it has executed and furnished to the Government representative under this contract, the Navy Form "Assurance of Compliance" with title VI of the Civil Rights Act of 1964, section 606 of the Federal Property and Administrative Services Act of 1949, as amended, and section 504 of the Rehabilitation Act of 1973, as amended.

12. The term "Government as represented by the Department of the Navy" means the Secretary, Under Secretary, or Assistant Secretary of the Navy, the Commander, Naval Sea Systems Command or any other duly authorized representative, acting within the limits of his authority, that the aforespecified may appoint.

13. The Government reserves the right to amend this Contract

unilaterally as necessary to reflect any changes in statutes, regulations or established Navy policy.

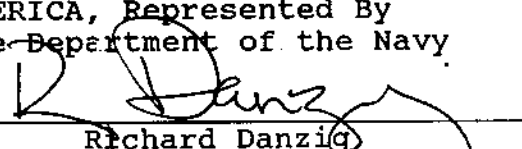
14. Upon delivery to and acceptance by the DONEE, title to the Vessel shall vest in the DONEE and title shall remain in the DONEE, subject to article 8 hereof.

15. No expense shall result to the Government as a consequence of the transfer of the Vessel to the DONEE, or as a consequence of the terms and conditions prescribed hereunder.

IN WITNESS WHEREOF, this contract has been duly executed as of the date written above.

The UNITED STATES OF
AMERICA, Represented By
the Department of the Navy

By

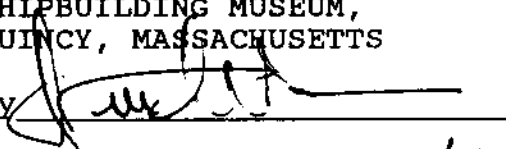


Richard Danzig

Title Secretary of the Navy
Acting

UNITED STATES NAVAL
SHIPBUILDING MUSEUM,
QUINCY, MASSACHUSETTS

By



Title EXECUTIVE DIRECTOR